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80-847

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

COMMON CAUSE, ET AL.,
Appellants,

v.

HARRISON SCHMITT, ET AL.,
Appellees.

On Appeal from the United States District Court for the District of Columbia

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APPENDICES TO THE JURISDICTIONAL STATEMENT

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*The District Court did not enter any separately denominated judgment in these cases.

** The Exhibits to the Amended Complaint could not practicably be reproduced in this volume. They have, accordingly, been lodged with the Court under separate cover.

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CA 80-1609 (Consolidated)

Three-Judge Court

COMMON CAUSE, ET AL.,
Plaintiffs

v.

HARRISON SCHMITT, ET AL.,
Defendants

FEDERAL ELECTION COMMISSION,
Intervenor

CA 80-1754

Three-Judge Court

FEDERAL ELECTION COMMISSION,
Plaintiff

v.

AMERICANS FOR CHANGE, ET AL.,
Defendants

Case heard before *Circuit Judges* TAMM and WILKEY, and *District Judge* PENN, Three-Judge District Court.

Opinion filed for the court by *Circuit Judge* WILKEY.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CA 80-1609 (Consolidated)

Three-Judge Court

COMMON CAUSE, ET AL.,
Plaintiffs

v.

HARRISON SCHMITT, ET AL.,
Defendants

FEDERAL ELECTION COMMISSION,
Intervenor,

CA 80-1754

Three-Judge Court

FEDERAL ELECTION COMMISSION,
Plaintiff

v.

AMERICANS FOR CHANGE, ET AL.,
Defendants

OPINION

WILKEY, *Circuit Judge:*

The Federal Election Commission ("FEC"), and Common Cause, a public interest organization, sued in two separate actions various groups of Ronald Reagan supporters who plan to spend monies to promote his chances in the 1980 presidential election. Both plaintiffs alleged that the plain language of section 9012(f) of the Presidential Election Campaign Fund Act ("Fund Act")[1] prohibits the defendants' proposed expenditures

[1] 26 U.S.C. § 9001 *et seq.* (1976).

which will exceed $1,000 to further the election of Ronald Reagan. As the Republican candidate for President, Mr. Reagan is entitled under the Fund Act to receive, and has already accepted, almost $30 million in public campaign funding. Pursuant to 26 U.S.C. section 9011(b) this three-judge district court was convened with jurisdiction to "implement or construe" the Fund Act. The statute further directs the court to act as quickly as practicable. On 19 August 1980 we heard oral argument on the scope and constitutionality of section 9012(f). On 28 August 1980 the court issued two expedited Orders granting, *inter alia*, summary judgment for the defendants in the FEC action, and dismissing the Common Cause action. In this Opinion we develop our reasoning for the two Orders of 28 August.

I. STATUTORY PROHIBITION AGAINST EXPENDITURES BY POLITICAL COMMITTEES

A. *Background*

The defendants in both actions are various organizations, as well as a few of their organizers, who are broadly soliciting contributions from individuals who favor Ronald Reagan for president. These organizations plan to use the money they collect—they hope to raise and spend millions of dollars—to hire professional media and political consultants and purchase advertising, *etc.* They intend these expenditures to yield an effective program to promulgate their political views before the November election. The defendant organizations have registered with the FEC as "political committees." [2]

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[2] A "political committee" is

> any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influ-

The defendants' literature and solicitation materials detail their support for Ronald Reagan and outline their intention to spend the sums collected to realize their collective aspirations for the presidential election.

B. *Statutory Basis: Jurisdiction and Substantive Prohibition*

1. *Jurisdiction in a Three-Judge District Court*

The FEC is plainly authorized by section 9011(b)(1) of the Fund Act to seek a declaratory judgment "that section 9012(f) validly prohibits expenditures in excess of $1,000 such as defendants have indicated they intend to undertake."[3] The statute is set out in full in the margin.[4] The right of Common Cause to bring such an

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ence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

26 U.S.C. § 9002(9) (1976).

Under another statute, the Federal Election Campaign Act of 1971 ("FECA"), 2 U.S.C. § 433(a) (1976), any "political committee" that is not an authorized campaign committee must file a statement of organization with the FEC within 10 days after becoming a political committee within the meaning of 2 U.S.C. § 431(4). The definition of "political committee" within the FECA is roughly the same as the definition of that term in the Fund Act.

[3] Motion of FEC for Summary Judgment at 30.

[4] 26 U.S.C. § 9011(b) (1976) provides:

§ 9011. Judicial review

(b) Suits to implement chapter.—

(1) The Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or contrue [*sic*, quoted here as "construe"] any provision of this chapter.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this

action, on the other hand, is equivocal. We will reserve all discussion of the Common Cause lawsuit until Parts IV and V below.[5]

The statute requires a three-judge district court to entertain actions to "implement or construe" the Fund Act. This action to test the scope and validity of section 9012(f) is within the jurisdiction of this court to "implement or construe" provisions of the Act.

2. *Prohibition Against Expenditures by "Political Committees"*

The plain language of section 9012(f) proscribes categorically the defendants' planned expenditures. They, the defendant "political committees," plan "to incur expenditures" "in an aggregate amount exceeding $1,000" "to further the election" of presidential candidate Reagan. This program of expenditures is a criminal offense according to the statutory section which is entitled "Criminal penalties." In pertinent part it reads:

§ 9012. Criminal penalties

(f) Unauthorized expenditures and contributions.—

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subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

[5] Common Cause requested substantial discovery of defendants as well as injunctive relief, neither of which was integral to the FEC complaint. *See* Parts IV-V *infra*.

> (1) Except as provided in paragraph (2), it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding $1,000.
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> • • •
>
> (3) Any political committee which violates paragraph (1) shall be fined not more than $5,000, and any officer or member of such committee who knowingly and willfully consents to such violation and any other individual who knowingly and willfully violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

We understand section 9012(f)(1) to prohibit *all* expenditures over $1,000 by political committees including "*independent expenditures.*" An independent expenditure is an expense incurred by a political committee free of any coordination with the official and authorized campaign committees of the candidate. We reject the limiting construction of section 9012(f) offered by defendants Harrison H. Schmitt, Carl T. Curtis, and Americans For Change. They suggest that the provisions may be interpreted as prohibiting only coordinated expenditures which have been authorized or requested by a publicly funded presidential candidate.[6] Though this "saving" construction would neatly preserve the statutory proscription from constitutional infirmity under *Buckley*

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[6] *See* Memorandum of Points and Authorities in Support of Motion to Dismiss of Defendants Harrison H. Schmitt, Carl T. Curtis and Americans For Change at 10-13.

v. *Valeo*[7] the language of the section will not support this rescue.

The section's plain terms apply broadly to *all* expenditures and this is in contrast with another section, section 9002(11) of the Fund Act, where Congress did adopt limiting language of this kind. If the limiting construction were correct, that is, if the expenditure prohibition applied only to expenditures authorized or requested by the candidate, then the section's existing proviso that only such expenditures are prohibited as "would constitute qualified campaign expenses if incurred by an authorized committee of [the] candidate[]" would be more or less superfluous. The prohibited coordinated, or non-independent, expenditures would then *all* be qualified campaign expenses[8] rendering the proviso unnecessary.

Also, another election law statute, 2 U.S.C. section 441a(a)(1)(A), already prohibits individuals, groups, and committees from making contributions in excess of $1,000. A "contribution," however, is defined, in 2 U.S.C. section 441a(a)(7)(B)(i), to include "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate. . . ." Hence we can only read the expenditure prohibition in section 9012(f) to mean what it says: *all expenditures* over $1,000 by political committees which further a presidential candidate's election are illegal. We are compelled then to determine the constitutionality of this expenditure limitation consistent with the First Amendment analysis conceived in *Buckley* v. *Valeo*.[9]

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[7] 424 U.S. 1, 46-47, & n. 53 (1976).

[8] *See* 26 U.S.C. § 9002(11) (1976).

[9] 424 U.S. 1 (1976).

II. FIRST AMENDMENT ANALYSIS UNDER *BUCKLEY* v. *VALEO*

In *Buckley* v. *Valeo*[10] the Supreme Court held that the campaign expenditure ceilings imposed by Congress in the Federal Election Campaign Act of 1971 ("FECA")[11] were unconstitutional. The Court reasoned that a statutory restriction on amounts which citizens, groups, or candidates could expend in a political campaign was an impermissible limitation of the freedoms of speech and association protected by the First Amendment. The watershed case controls the election law case before this court. Thus a discussion of *Buckley* is appropriate before beginning our own constitutional analysis of the severe expenditure ceiling imposed on political committees.

A. *Campaign Expenditures Are Speech*

The Supreme Court made quite clear in *Buckley* that the power of Congress to regulate federal elections was well-established under the Constitution.[12] That power to regulate, however, is not unbounded; it must of course be exercised consistent with rights guaranteed by the Constitution.

Campaign activity is speech on the highest constitutional plane. "The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' "[13] Moreover, political expression in a campaign

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[10] *Id.* at 12-59.

[11] 2 U.S.C. § 431 *et seq.* (1976).

[12] *Buckley* v. *Valeo*, 424 U.S. at 13.

[13] *Id.* at 14 (quoting *Roth* v. *United States*, 354 U.S. 476, 484 (1957)).

is associational activity also protected by the First Amendment. The Constitution guarantees the " 'freedom to associate with others for the common advancement of political beliefs and ideas,' a freedom that encompasses '[t]he right to associate with the political party of one's choice.' " [14]

The Supreme Court noticed in *Buckley* the reality that public communication is expensive. Free speech is costly. Television, radio, newspapers, buttons—the Court has acknowledged that "these expensive modes of communication [are] indispensable instruments of effective political speech." [15] A restriction on the amount which can be spent on political communication is a practical limitation on the political issues which can be addressed or answered in a campaign. It also limits the range of participants in the political debate, and the size of the audience.

B. *Level of Judicial Scrutiny*

It was strenuously argued to the Supreme Court in *Buckley* that *expenditures* in a campaign entailed primarily "conduct" and not "speech." The Court rejected this contention emphatically,[16] stating that "this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to in-

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[14] *Id.* at 15 (quoting *Kusper* v. *Pontikes*, 414 U.S. 51, 56, 57 (1973) (*quoted in Cousins* v. *Wigoda*, 419 U.S. 477, 487 (1975)).

"The First Amendment protects political association as well as political expression." *Buckley* v. *Valeo*, 424 U.S. at 15. The Court noted that the constitutional right of association was derived from the role of group association to advocate *effectively* public and private points of view. *Id.* (citing *NAACP* v. *Alabama*, 357 U.S. 449, 460 (1958)).

[15] *Id.* at 19.

[16] *Id.* at 16.

troduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment." [17] "[T]he governmental interests advanced in support of the Act [*i.e.*, FECA] involve 'suppressing communication.' The interests served by the Act include restricting the voices of people and interests groups who have money to spend and reducing the overall scope of federal election campaigns." [18] Following *Buckley*, then, it is plain that election laws regulating political expression require a demonstration of "compelling governmental interest" to withstand a constitutional challenge calling for "strict scrutiny" by the reviewing court.

C. *Compelling Governmental Interest*

The Supreme Court considered three governmental interests adduced to support the contribution and expenditure ceilings: to prevent corruption, or, the appearance of

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[17] *Id.* (citations omitted).

> Unlike [*United States* v.] *O'Brien*, [391 U.S. 367 (1978) (draft-card burning case)] where the Selective Service System's administrative interest in the preservation of draft cards was wholly unrelated to their use as a means of communication, it is beyond dispute that the interest in regulating the alleged "conduct" of giving or spending money [in a campaign] "arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful." 391 U.S., at 382.

Id. at 17.

Obviously Congress *intends*, albeit neutrally, to regulate the speech-potential of money contributions and expenditures through the election laws it enacts. The giving and spending of money is alluring to the candidate because of the speech-potential it provides to him or her, while to Congress that particular speech-potential also represents the enticement that could be the wedge of corruption, tainting the candiate and the election process. Thus Congress's regulatory intention with respect to campaign contributions and expenditures necessarily involves the regulation of speech.

[18] *Id.* at 17.

corruption; to mute the voices of affluent groups and persons; and, to put a "brake" on the ballooning cost of election campaigns.[19] Only the first interest, to squelch corruption, was held constitutionally sufficient to support the FECA's $1,000 contribution limitation—a limitation on speech. The Court was crystal-clear in stating that Congress had no valid power to "equaliz[e] the relative ability of individuals and groups to influence the outcome of elections . . ."; because, "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." [20]

In short, the Court has indicated the prevention of corruption is the singular compelling governmental interest justifying the limit on maximum contributions to candidates. Congress has constitutional authority, the Court held, to ensure that the marketplace of ideas in an election is not recast as a marketplace of "influence."

D. *Constitutional Distinction Between Contributions and Expenditures*

The Court *did not accept* that even the compelling anti-corruption governmental interest supported a limitation on *expenditures* in a campaign. The Court reasoned that limitations on *expenditures* were more restrictive of First Amendment rights than limitations on *contributions*, hence the congressional objective to protect the new contribution ceilings by closing the so-called loop-hole of "independent" expenditures was constitutionally insufficient.[21] Preventing corruption would justify the contribution ceilings but would not also justify expenditure ceilings that redress only tangentially the corruption problem (*i.e.*, by "protecting" contribution limits from circumvention), yet severely impinge on free speech rights.[22]

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[19] *Id.* at 25-26.

[20] *Id.* at 48-49.

[21] *Id.* at 44.

[22] *Id.* at 45.

Controlling contributions, the Court believed, would exorcise *quid pro quo* from the political scene.[23] Impeding the opportunity for venal politician/contributor relationships was a constitutionally valid means of accomplishing the governmental interest in fighting corruption. Contribution ceilings preserve electoral integrity without directly impinging on the rights of individuals.[24] On the other hand, "the independent advocacy restricted by the [expenditure] provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions."[25] For, "[u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive."[26]

The right of citizens and groups to make expenditures in a campaign poses, according to the Court, only the most attenuated danger of *quid pro quo*. Evidently, spending money can just not be equated with *giving* money as a source of possible corruption. The Court noted that the threat of corruption in political spending was mitigated to a large extent by coupling unlimited expenditures with a strict restriction on contributions (which the Court upheld). There was no evil in collecting small amounts from myriad individual contributors and then translating those funds into political communication spreading the candidate's message.[27] Thus the Court struck down FECA's section 608(e)(1) which limited independent expenditures, saying, "[t]hese provisions place substantial and direct restrictions on the ability of candidates, citizens, *and associations* to engage

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[23] *Id.*

[24] *Id.* at 58.

[25] *Id.* at 46.

[26] *Id.* at 47.

[27] *See id.* at 56 & n.64 (quoting from Judge Tamm's separate opinion, concurring in part and dissenting in part, *Buckley* v. *Valeo*, 519 F.2d 821, 917 (D.C. Cir. 1975)).

in protected political expression, restrictions that the First Amendment cannot tolerate." [28]

A final perspective on *Buckley's* requirement of unlimited expenditures [29] comes from the more recent explication of the election laws in the *Republican National Committee* v. *Federal Election Committee* trilogy.[30] These cases upheld public financing of presidential elections. Candidates, the constitutional rationale goes, are permitted to forgo their own right to private contributions and unlimited expenditures in exchange for (exclusive) financing from the public coffers. This is a voluntary decision made by the candidate, presumably, because the candidate believes that his or her political communication is enhanced by public funding, even given the restrictions. The candidate's decision, however, cannot bind his or her supporters outside the official campaign. Public funding—and the election law after *Buckley*—leaves open to supporters a wide range of means to express their support and their politics. In fact, *Republican National Committee* would appear to mean that the restrictions associated with public funding (*e.g.*, no private contributions, expenditure ceilings, etc.) are permissible only because the rights of supporters are left untouched. "Most important", reflected the court, is that "uncoordinated expenditures are permitted without limit. Limitations on

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[28] *Id.* at 58-59 (emphasis added).

[29] Pivotal to the Court's analysis of electoral integrity *vis a vis* independent expenditures was the statutory provision that "controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act." *Id.* at 46. The Court recognized that it was one thing for Congress to restrict expenditures free from the candidate's control, but quite another for Congress (validly) to limit sham, "independent" expenditures, which being in the candidate's effective control amounted to nothing more than masked contributions and could be regulated as such.

[30] 100 S.Ct. 1639 (1980), *aff'g summarily*, 487 F. Supp. 280 (S.D.N.Y.) (three-judge court), *and*, 616 F.2d 1 (2d Cir.) (*en banc*).

uncoordinated expenditures were held unconstitutional in *Buckley* v. *Valeo*." [31]

III. SECTION 9012(f) LIMITATIONS ON EXPENDITURES BY POLITICAL COMMITTEES INHIBITS FIRST AMENDMENT FREEDOMS

The foregoing discussion of *Buckley* indicates the dubious constitutional quality of election law ceilings limiting amounts which may be independently expended in a campaign. The *Republican National Committee* cases still reserve a highly protected status for *independent expenditures* even since the advent of (conditional) public funding for presidential candidates (who accept the terms). Now we turn to our own constitutional analysis of section 9012(f)'s prohibition of independent expenditures by political committees in excess of $1,000. This analysis turns on two fundamental questions which will explore whether section 9012(f) is consistent with the First Amendment after *Buckley*: (1) Does the proposed spending by the defendant political committees constitute an "expenditure" question under *Buckley?*, and (2) Are political committees, under *Buckley*, entitled to the same First Amendment rights to make independent expenditures as individuals and "informal groups?" We answer both questions affirmatively and hold that section 9012(f) is facially unconstitutional.

A. *Political Committee Prohibition Is an Expenditure Limitation and Thereby Limits Speech*

Under *Buckley* and the *Republican National Committee* cases the right of individuals and groups (outside of

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[31] *Republican National Committee* v. *Federal Election Committee*, 487 F. Supp. 280, 286 (S.D.N.Y.) (three-judge court), *aff'd summarily*, 100 S.Ct. 1639 (1980) (citing *Buckley*, 424 U.S. at 39-51).

official campaigns) to make independent expenditures is a constitutional pillar of the election laws. Supporters of candidates have rights separate from the candidates they favor, rights which cannot be alienated by the candidate's choice with regard to public funding.[32] There is no constitutional reason that the organization of individual supporters of a candidate into groups called "political committees" should inpugn the distinct and separate rights of campaign outsiders to sponsor political speech. Independent expenditures are the principal—and protected—source of this sponsorship.

1. *This is Not a "Contribution" Case*

Buckley indicated clearly that expenditure limitations jeopardize First Amendment rights more severely than do limitations on contributions.[33] Consequently, *Buckley* held that the governmental interest in cleansing the electoral process of possible corruption was not enough to validate restrictions on expenditures. A "contribution" case, on the other hand, is entitled to less-exacting judicial scrutiny because "the transformation of contributions into political debate involves speech by someone other than the contributor."[34] The case before this court is an "expenditure" case because it is precisely the speech of individual contributors which is hampered by the statutory restriction.

The defendant political committees are simply "pooling agents" for many small voices wishing to make intelligible political statements. The money expended by the committees pays for political communications which speak

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[32] *See Republican National Committee* v. *Federal Election Commission*, 487 F. Supp. 280, 285-86 (S.D.N.Y.) (three-judge court), *aff'd summarily*, 100 S.Ct. 1639 (1980).

[33] *See* Part II. D. *supra*.

[34] *Buckley* v. *Valeo*, 424 U.S. at 21.

the language of their members and contributors. It is the speech of the contributors which is defrayed by the contributions. Earlier, we noted that political speech is expensive nowadays. It requires a lot of money and a lot of sophistication to yield effective communication in the political arena. Political committees pool money from individuals who are interested in politics and amplify their shared viewpoint into an efficient political message. A simple example explains the efficiency argument: One thousand politically motivated persons could each afford to buy a short classified advertisement in one thousand local newspapers; if, however, they join together, pool funds and integrate planning, they can purchase perhaps an advertisement in a national magazine, or a commercial on network television. There can be little doubt that an economy of scale enhances the informational impact of larger units of communication. Since it is beyond contention that individuals and "informal groups" may make unlimited independent expenditures to express their First Amendment rights, political committees may not be denied the same right merely because they are *efficient* groupings of like-minded individuals.

2. *Individuals Speak Through Political Committees*

The communication sponsored by the political committees is the language of their members and contributors because the contributions are made based on an understanding and community of political interest among all of the contributors and their political committees. The contributors do have power over the speech disseminated by the political committees. Political speech like this is possible in the first instance only because the contributors contribute to one particular committee or another. Contributors associate in a particular political committee because that committee will express their own thoughts, which benefit thereby from amplitude in numbers and professionalism. If a committee disappoints its membership, contributions will dry up.

To require that contributors to political committees literally draft their own television and other public messages is naive. These contributors express themselves through political committees—their First Amendment rights are not merely coextensive with their actual participation in drafting specific language. The language drafted by the steering groups of the political committees reflects the political speech common to all of the member-contributors. That the language and format employed in the groups' public political communications have a professional touch does not make it any less the language of the individual contributor; one of the things he or she most wants is the professional touch to make his or her speech efficient and effective in the modern age. One thousand individuals have just as much right to join together to do this as one man or woman to do it alone. It emasculates the guaranteed right of association to disallow political committees from organizing and focusing the views of their adherents.[35] Thus the expenditures undertaken by the political committees represent an efficient exercise of First Amendment rights of associated individuals. This exercise warrants the highest protection under *Buckley* and *Republican National Committee.*

3. *Speech Emanating from Political Committees Is Different from a Candidate's Speech*

A word is in order to point out how speech promulgated through a political committee bears a different relation to its constituent contributors than does a candidate's speech to his or her constituent supporters (or, contributors to the non-publicly funded candidate). A candidate strives to satisfy and mollify his or her supporters whenever possible; the politician, after all, depends considerably on pleasing supporters in order to maintain the campaign's momentum and coherence. Candidates

[35] *See* Part III. B. 2 *infra.*

are loosely tethered, not bound, to the notions of political speech held by their supporters. Political committees, on the other hand, are bound to reify the political thoughts of their member-contributors. The political communication by political committees is circumscribed by the expectations and understandings of the associates. The organizers of independent political committees, as agents and unlike candidates, are tied by their commitments to their particular contributors. The candidate, however, is free to exercise his or her own judgment as to what is in his or her own best interests based on a broader constituency. (This explains the apprehension with which many candidates' organizations look on the activities of uncoordinated and uncontrollable independent committees, but this does not and cannot limit the right of these independent committees to make their contribution to the robust political debate in any way they and their associates choose.)

The above comparison highlights once again the factual reality, as well as constitutional reality following *Buckley* and *Republican National Committee*, that the rights of candidates and their supporters are distinct. In *Buckley*, the Court realized that candidates could be ambivalent toward the independent political forays of their supporters. The Court noted that "[u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive." [36] Individuals, by associating in political committees, can express viewpoints that complement the positions of the favored candidate, or, they can express viewpoints which seek to influence or prod the candidate and the public. That individuals, through their political committees, hope for a candidate's election in no way means that their own speech is interchangeable with the candidate's. The Constitution entitles

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[36] *Buckley* v. *Valeo*, 424 U.S. at 47.

even mainstream individuals favoring mainstream candidates to communicate their separate, if sympathetic, views.

4. *Political Committees Cannot Wield the* Quid Pro Quo: *The Compelling Interest in Eliminating Corruption is Insufficient to Justify Section 9012(f)*

As elaborated in Part II above, the *Buckley* Court sustained FECA's contribution, though not expenditure, limits on the basis of the compelling governmental interest in protecting elections from the taint of corruption. The Court saw in contributions to candidates the real possibility of corrupting *quid pro quos*. Independent expenditures, the Court felt, could not pose the same *quid pro quo* problem.

Similarly, the anticorruption interest cannot support the prohibition against *independent* expenditures by political committees. Any attempted exaction of a *quid pro quo* by a political committee would of course totally eliminate the constitutional protection reserved under *Buckley* for expenditures that are *independent*. A *coordinated*, non-independent expenditure by a committee might harbor a *quid pro quo*, but no more so than an individual's expenditures might.[37] Coordinated expenditures, by individuals or committees, are treated like contributions;[38] such contributions to a publicly funded candidate are of course illegal, but are inapposite to the constitutional issue here under consideration.

It is difficult, then, to imagine how the thousands of "small voices" associated together in a political commit-

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[37] In fact, the large-scale operation of a political committee, requiring registration with the FEC, would be less capable of keeping a *quid pro quo* secret than could a wealthy individual operating without the bright sunshine of public scrutiny.

[38] *See* notes 7-9, 29 & accompanying text *supra*.

tee could compromise a candidate for President. The political committees are venting the political ideas and commitments of their members, not of the candidate. The candidate will no more be beholden to the political committees than Presidents typically are to those elements of their constituency who voted for them. It is individuals themselves, acting in association, who are addressing political issues through independent expenditures. This public comment may persuade, and thereby influence decisionmakers, but it is protected by the First Amendment.[39]

A further check does now exist, however, on the power of political committees to finance the views of their members: contributions to committees are restricted in amount by 2 U.S.C. section 441a(a)(C). An individual may give only up to $5,000 to a political committee. This particular contribution limitation was not addressed directly in *Buckley*, but might be constitutionally permissible according to the *Buckley* rationale, which upheld other such limits.[40] What all of this clearly indicates is that while

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[39] *See Let's Help Florida* v. *McCrary*, 621 F.2d 195 (5th Cir. 1980).

[40] Contribution limits to political committees have been upheld in two recent cases. *See California Medical Association* v. *FEC*, No. 79-4426, slip op. (9th Cir. 23 May 1980); *Mott* v. *FEC*, No. 79-3375 (D.D.C. 30 June 1980). Congress could, perhaps, if these authorities are upheld, shrink reasonable limits on contributions as it might deem necessary to control further possibilities for corruption in the electoral process. We have no occasion here to express any view on the constitutionality of specific limitations on contributions to political committees. *But cf. California Medical Association* v. *FEC*, No. 79-4426, slip op. at 25-26 (9th Cir. 23 May 1980)

(Wallace, J., concurring and dissenting):

> Only in conjunction with outside donors will some unincorporated associations be able to aggregate sufficient funds and expertise to compete effectively in the political market place with other more affluent 'persons' capable of huge personal expenditures.

political committees may have the power to express sympathy and agreement with candidates, neither they nor individual members have the power to control the candidates they favor.

B. *Political Committees Have First Amendment Rights Commensurate With Individuals' Rights*

In the preceding section we demonstrated that the prohibition of section 9012(f) raises an *expenditure* question under *Buckley*, thereby implicating highly protected free speech rights. We also showed how political committees simply pool funds and channel the joint speech of their members. We now turn to consider directly the closely related question: whether political committees, as multi-person organizations, have First Amendment rights so inferior to those of individuals that they fall out from the protective aegis of *Buckley*?

1. Buckley *Comprehends First Amendment Rights for Groups*

It is absolutely plain that free speech rights protected under *Buckley* extend beyond individuals. The Court there overturned "substantial and direct restrictions on the ability of candidates, citizens, *and associations* to engage in protected political expression. . . ."[41]

Furthermore, the Supreme Court has also emphasized that free expression may not be limited on the basis of the "identity of its source, whether corporation, *association*, union or individual."[42] As a "political committee"

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[41] 424 U.S. at 58-59 (emphasis added). The Court also wrote: "It is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, *groups*, and candidates." *Id.* at 39 (emphasis added).

[42] *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 777 (1978) (emphasis added).

is defined in 26 U.S.C. section 9012(9) as "any committee, association or organization" which receives contributions or make expenditures for the purpose of influencing a candidate's election, it should fall under the same general protection reserved for groups and associations wishing to communicate their interests to the public. The fact of receipt of contributions (to finance expenditures) does not distinguish political committees from any other association which takes an active position on a candidate. Likewise, a political committee is no different under the First Amendment from a wealthy individual who may, it has been decided, lawfully dedicate his entire fortune to make independent expenditures paying for the same public communications, *e.g.*, television, magazine, newspaper, billboard advertisements, *etc.*, which the committee would undertake. Individuals—wealthy or otherwise—groups and associations, and political committees all engage in the same speech activities. In all cases the speech is meant to express active support for or opposition to a particular candidacy; *i.e.*, to express affiliation with and approval for the ideas of that candidate, or the reverse. This active support or opposition is buttressed by the "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open." [43]

2. *Freedom of Association Requires That Individuals Be Allowed to Join in Political Committees*

If section 9012(f) were not struck down, individuals of modest means would have no right to join with others to state their views to the public with some force. This

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[43] *New York Times* v. *Sullivan*, 376 U.S. 254, 270 (1964).

We note that the election law exempts press organizations, 26 U.S.C. § 9012(f)(2)(A), and tax-exempt "section 501(c)" organizations, *id.* § 9012(f)(2)(B), from the limitations applicable to political committees. This discrimination against political committees along with the discrimination in favor of wealthy individuals is without constitutional foundation.

right of association is crucial under the Constitution and recognized in *Buckley*. We believe what the *Buckley* Court said about FECA's contribution and expenditure limits is dispositive here on the right of individuals to join political committees and thereby amplify their ability to speak publicly on matters of political concern. The Court said:

> The Act's contribution and expenditure limitations also impinge on protected associational freedoms. Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee, *but leave the contributor free to become a member of any political association and* to assist personally in the association's efforts on behalf of candidates. And the Act's contribution limitations permit associations and candidates to aggregate large sums of money to promote effective advocacy. By contrast, the Act's $1,000 limitation on independent expenditures "relative to a clearly identified candidate" precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association. See *NAACP* v. *Alabama*, 357 U.S. at 460. The Act's constraints on the ability of independent associations and candidate campaign organizations to expend resources on political expression "is simultaneously an interference with the freedom of [their] adherents," *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion). See *Cousins* v. *Wigoda*, 419 U.S., at 487-488; *NAACP* v. *Button*, 371 U.S. 415, 431 (1963).[44]

[44] *Buckley* v. *Valeo*, 424 U.S. at 22-23 (emphasis added).

Politics is, after all, the unifying theme among members of political committees; their associational tie is the desire to affirm publicly their political viewpoint held in common. The organizers of political committees really only mobilize existing political sentiment looking for an outlet—the small size of contributions freely given by diverse contributors expecting no personal glory or prospects of hobnobbing with celebrities attests to that. This phenomenon of the so-called political committees *is* the right of association to express political views together with others, and thereby impress the public. An independent association dedicated to effective political expression which was not in essence a "political committee" would be either an exempted organization,[45] or terribly quaint. The Constitution protects potent political voices along with the more effete ones; the First Amendment ensures both that persons may speak, and that they may speak together.

C. *Conclusion—Section 9012(f) Violates the First Amendment*

Given our holdings that section 9012(f) is an expenditure restriction, and is, therefore, a powerful inhibition on political speech, we must strike down that section as it fails to survive the strict scrutiny required by the First Amendment. The compelling governmental interest to fight electoral corruption is insufficient, here as in *Buckley*, to justify what amounts to a direct limitation on political speech. Whereas a presidential candidate by accepting public funds may choose for him or herself to do without unlimited contributions and expenditures, the candidate's public supporters have a separate, protected right to express themselves, individually or jointly. This preserves free access and full participation in the public debate.

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[45] *See* note 43 *supra*.

IV. COMMON CAUSE SUIT DISMISSED AS MOOT

In Count I of its lawsuit Common Cause sued for injunctive and declaratory relief to the effect that section 9012(f) applied to the defendant political committees and prohibited their proposed expenditures. This involves the same issue as in the action brought by the FEC, herein resolved against the FEC. Consequently, as in our 28 August 1980 Order, we dismiss Count I of Common Cause's action as mooted pursuant to our decision in the FEC action. We express no opinion whether Common Cause possessed the requisite Article III characteristics to press Count I of its lawsuit before this court.

V. COMMON CAUSE MAY NOT SUE *TO ENFORCE* THE ELECTION LAWS

Count II of the Common Cause complaint does not implicate section 9012(f)'s prohibitions against independent expenditures. Rather, the theory of Count II is "that the defendant committees are not in fact independent of Ronald Reagan and his authorized committees. The violations of the Fund Act that Count II alleges are violations that result from, and are premised upon, coordination and concerted action between defendant committees and the Regan campaign." [46] We understand Count II to be an impermissible attempt by Common Cause, a private plaintiff, to enforce the Fund Act. We are without subject-matter jurisdiction under section 9011(b) to hear this claim.[47] The FEC is charged by statute with exclu-

[46] Plaintiffs' Opening Brief on the Merits at 50.

[47] Whether a single-judge district court would have jurisdiction under 28 U.S.C. § 1331 (1976) (federal question jurisdiction) is not before this court. Our holding dismissing Count II does not require explicit consideration of the Article III "case or controversy" requirement. As we find ourselves without subject-matter jurisdiction we leave open the question of Common Causes's standing to bring Count II of its complaint.

sive enforcement jurisdiction of the election laws, and moreover, the alleged illegal coordination would violate Fund Act provisions only with respect to *candidates*, not the defendant political committees; therefore, we hold also that Count II fails to state a claim upon which relief can be granted.

A. *No Subject-Matter Jurisdiction to Hear a Coordination Claim*

Section 9011(b) of the Fund Act grants jurisdiction to three-judge district courts of the United States to entertain actions "to implement or construe" provisions of the Fund Act whether or not the plaintiff has exhausted administrative or other remedies.[48]

Count II, though, raises complicated questions of fact and difficult questions of election law policy which are without the scope of "implement or construe." It would be incongruous and cumbersome for a three-judge court, ordered by Congress to expedite its consideration,[49] to supervise extensive discovery and receive detailed factual evidence. This fact-finding, of course, is prerequisite to—and pertains only to—a determination of *compliance* with the election laws. A compliance issue is not one properly before a three-judge court charged with implementation and construction of a congressional act; and, an expedited judgment on compliance is not appropriate to a nonexpert three-judge court evaluating in the first instance circumstances surrounding an election controversy.

Congress ordered expedition in judicial review under section 9011(b) because elections come up fast and candidates, whoever they turn out to be, and others, need to know whether and how the election laws apply, and how

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[48] 26 U.S.C. § 9011(b)(1)&(2) (1976).

[49] 26 U.S.C. § 9011(b)(2) (1976).

much they provide.[50] So that elections run smoothly, Congress has provided only that three-judge courts (with direct appeal to the Supreme Court) shall: quickly construe doubtful (or, dubious) sections of the Fund Act, and/or quickly implement the Act's funding mechanism for the benefit of entitled candidates.

Three-judge district courts are convened typically in order to judge a statute's constitutionality on its face, or to clarify a statute's meaning and application pursuant to standard judicial statutory construction. Three-judge district courts were used in *Buckley* and *Republican National Committee* as a forum for constitutional challenges to the Fund Act.[51] In short, we view the section 9011(b) jurisdiction of this court narrowly. The narrow view is inherent in "implement or construe," by which we understand Congress to have limited the competence of this court to questions of fundamental statutory interpretation and to pressing pre-election questions of uncertainty regarding funds allocable to candidates.[52] Questions of Fund Act violations that require elaborate investigation of unique factual situations are not proper subjects for this court.

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[50] *See* S. CONF. REP. NO. 92-533, 92d Cong., 1st Sess. 53-54 (1971); 117 CONG. REC. H. 12, 119 (9 Dec. 1971).

[51] *See also Jones* v. *Branigin*, 433 F.2d 576 (6th Cir. 1970), *cert. denied*, 401 U.S. 977 (1971) (substantial constitutional question prerequisite to convening of three-judge district court). All precedents are in accord supporting the proposition that three-judge district courts are extraordinary legal forums which are convened only to hear cases of special public interest.

[52] The time-sensitivity of a candidate's—and others'—need to know about available funds explains § 9011(b)'s provision of jurisdiction notwithstanding any exhaustion of administrative remedies.

B. *FEC Has Exclusive Enforcement Jurisdiction*

Congress has legislated in no uncertain terms with respect to FEC dominion over the election law. Section 437c(b)(1) of FECA reads:

> The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and Chapter 95 and Chapter 96 of Title 26 [*i.e.*, the Fund Act]. The Commission shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.[53]

Since we view Count II as clearly an enforcement action, an action to ensure compliance with various provisions of the Fund Act, we must hold that FECA's section 437c(b)(1) precludes any consideration of alleged coordination of expenditures as pressed by Common Cause before this court.

The FEC itself adjudges Count II of the Common Cause complaint as an action to enforce the election laws.[54] The FEC which was allowed to intervene in the Common Cause action moved to dismiss Common Cause's complaint for lack of subject-matter jurisdiction.

The FEC's position on its enforcement jurisdiction has recently been vindicated by a panel of the Court of

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[53] 2 U.S.C. § 437c(b)(1), as amended by Pub. L. No. 96-187, § 306(b)(1), 93 Stat. 1355 (1979).

[54] FEC Motion to Dismiss at 11 & n.8. The FEC contended in footnote 8 that its "suit clearly differs from Common Cause's suit as the Commission's suit does not seek enforcement of the Act," rather, it "seek[s] only [a] declaratory judgment of the construction and constitutionality of 26 U.S.C. § 9012(f) pursuant to 26 U.S.C. § 9011(b)." In text the FEC wrote that Common Cause was simply "bring[ing] an enforcement action in the guise of a suit to implement or construe the statute."

Appeals for this circuit.[55] That court held that violations of the election laws[56] must first be brought before the FEC as within that agency's exclusive jurisdiction. The *Carter-Mondale* holding that the FEC has exclusive jurisdiction with respect to alleged campaign violations and noncompliance controls here.[57]

C. *Alleged Violations in Count II Do Not Apply to Political Committees*

Common Cause alleges in Count II that the defendant committees' proposed expenditures will violate sections 9003(b)(1), 9003(b)(2), 9012(a)(1), and 9012(b)(1) of the Fund Act. These provisions apply to presidential candidates who receive federal funding and must, therefore, limit their own expenditures and forgo private contributions.[58] Each of these sections can be violated only

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[55] *Carter-Mondale Reelection Committee, Inc.* v. *Federal Election Commission*, Nos. 80-1841 & 80-1842, slip op. (D.C. Cir. 12 Sept. 1980).

[56] The alleged violations in *Carter-Mondale* involved the same issues of coordination between political committees and the official Reagan campaign that are the substance of Common Cause's Count II. *See id.* at 8.

[57] "Exclusive jurisdiction," held the court, was especially powerful in the election law context. The law "provides for FEC enforcement through both informal consent proceedings and formal proceedings." *Id.* at 11. An FEC investigation may completely absolve the challenged conduct, or may result in a partial vindication resolved by a consent decree. The intrusion of massive discovery requests by a private party, like Common Cause, would plainly upset the delicate balance in the structure of campaign regulation. Common Cause would unsettle the coherent administration of election law policy and practice if allowed to go forward with Count II of its complaint.

[58] Candidates may not restrict the individual rights of their supporters as a result of the choice to accept public funding. *See* notes 30-32 & accompanying text *supra*.

by *the candidate* receiving federal funds. Thus Count II does not state a claim alleging a violation of the Fund Act by the defendant political committees. This also confirms the impropriety of permitting a private party to enforce the election laws at its own discretion. For these reasons we dismiss Count II also for failure to state a claim upon which relief can be granted.

CONCLUSION

Consistent with our Orders of 28 August 1980, we deny the FEC's motion for summary judgment and grant summary judgment for the defendant political committees and individuals on the grounds that section 9012(f) violates the Constitution. We dismiss Count I of the complaint brought by Common Cause as moot; Count II is dismissed for lack of subject-matter jurisdiction and for failure to state a claim.

So ordered.

/s/ Edward A. Tamm
EDWARD A. TAMM
Circuit Judge

/s/ Malcolm Richard Wilkey
MALCOLM RICHARD WILKEY
Circuit Judge

/s/ John Garrett Penn
JOHN GARRETT PENN
District Judge

September 30, 1980

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. 80-1609

Three-Judge Court

COMMON CAUSE, *et al.*,
Plaintiffs

v.

HARRISON SCHMITT, *et al.*,
Defendants

ORDER

The Court, having before it the pleadings, motions, affidavits, and briefs of the parties and amici curiae, heard oral argument on August 19, 1980. Because of the nature of the case the Court is of the view that the decision, like the briefing and argument, should be expedited, with opinion or opinions to follow.

It is therefore ORDERED

1. That the motion of Common Cause, et al. to consolidate this action with C.A. 80-1754 is DENIED.
2. That Count I of Plaintiffs' Amended Complaint is DISMISSED on the basis of the Court's decision in C.A. 80-1754, *Federal Election Commission* v. *Americans for Change, et al.*
3. That Count II of Plaintiff's Amended Complaint is DISMISSED for lack of jurisdiction of the subject matter and for failure to state a claim. Defendants' motions to that effect are hereby GRANTED.
4. That defendants' motions for protective orders are DENIED as MOOT.

5. That all other pending motions by all parties are DENIED.

/s/ Edward A. Tamm
EDWARD A. TAMM
Circuit Judge

/s/ Malcolm Richard Wilkey
MALCOLM RICHARD WILKEY
Circuit Judge

/s/ John Garrett Penn
JOHN GARRETT PENN
District Judge

August 28, 1980

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

C.A. 80-1754

Three-Judge Court

FEDERAL ELECTION COMMISSION,
Plaintiff

v.

AMERICANS FOR CHANGE, *et al.*,
Defendants

ORDER

The Court, having before it the pleadings, motions, affidavits, and briefs of the parties and amici curiae, heard oral argument on August 19, 1980. Because of the nature of the case the Court is of the view that the decision, like the briefing and argument, should be expedited, with opinion or opinions to follow.

It is therefore ORDERED

1. That the motion of the American Civil Liberties Union Fund of the National Capital Area for leave to participate as Amicus Curiae is GRANTED.
2. That the motion of Common Cause to intervene is DENIED.
3. That the motion of the Plaintiff Federal Election Commission for Summary Judgment is DENIED.
4. That the motions of the Defendants Americans for Change, Americans for an Effective Presidency, and Fund for a Conservative Majority for Summary Judgment are GRANTED.

5. That all other pending motions by all parties are DENIED.

/s/ Edward A. Tamm
EDWARD A. TAMM
Circuit Judge

/s/ Malcolm Richard Wilkey
MALCOLM RICHARD WILKEY
Circuit Judge

/s/ John Garrett Penn
JOHN GARRETT PENN
District Judge

August 28, 1980

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-1609

COMMON CAUSE, DAVID COHEN, WINIFRED LONG
Plaintiffs,

v.

HARRISON SCHMITT, *et al.*
Defendants.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that plaintiffs Common Cause, David Cohen and Winifred Long appeal to the Supreme Court of the United States from the final order entered in this action on August 28, 1980, dismissing plaintiffs' Amended Complaint.

This appeal is taken pursuant to 26 U.S.C. § 9011(b)(2), 28 U.S.C. § 1252, and 28 U.S.C. § 1253.

/s/ Michael L. Burack
MICHAEL L. BURACK

Wilmer & Pickering
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000

One of Counsel for Plaintiffs

September 26, 1980

[Certificate of Service omitted in printing]

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-1754

FEDERAL ELECTION COMMISSION
Plaintiff,

v.

AMERICANS FOR CHANGE, *et al.*,
Defendants.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Common Cause, David Cohen and Winifred Long appeal to the Supreme Court of the United States from the final order entered in this action on August 28, 1980, denying their motion to intervene in this action.

This appeal is taken pursuant to 26 U.S.C. § 9011(b)(2), 28 U.S.C. § 1252, and 28 U.S.C. § 1253.

/s/ Michael L. Burack
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One of Counsel for Common Cause, David Cohen and Winifred Long

September 26, 1980

[Certificate of Service omitted in printing]

APPENDIX F

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CA 80-1609

Three-Judge Court

COMMON CAUSE, *et al.*,
Plaintiffs

v.

HARRISON SCHMITT, *et al.*,
Defendants

FEDERAL ELECTION COMMISSION,
Intervenor

CA 80-1754

Three-Judge Court

FEDERAL ELECTION COMMISSION,
Plaintiff

v.

AMERICANS FOR CHANGE, *et al.*,
Defendants

ORDER

The Court hereby orders that the above cases be consolidated.

EDWARD A. TAMM
Circuit Judge

/s/ Malcolm Richard Wilkey
MALCOLM RICHARD WILKEY
Circuit Judge

/s/ John Garrett Penn
JOHN GARRETT PENN
District Judge

September 24, 1980

[Filed September 25, 1980]

APPENDIX G

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CA 80-1609 (Consolidated)

Three-Judge Court

COMMON CAUSE, *et al.*,
Plaintiffs

v.

HARRISON SCHMITT, *et al.*,
Defendants

FEDERAL ELECTION COMMISSION,
Intervenor

CA 80-1754

Three-Judge Court

FEDERAL ELECTION COMMISSION,
Plaintiff

v.

AMERICANS FOR CHANGE, *et al.*,
Defendants

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Common Cause, David Cohen and Winifred Long, plaintiffs in No. 80-1609 and intervenor-applicants in No. 80-1754, appeal to the Supreme Court of the United States from the orders, entered in these consolidated actions on August 28, 1980,

that (1) dismissed their Amended Complaint in No. 80-1609, (2) denied their motion to intervene in No. 80-1754, and (3) denied the motion of the Federal Election Commission for summary judgment and granted the motions of the defendants for summary judgment in No. 80-1754.

We are filing this Amended Notice as a result of the Order dated September 25, 1980 (which we received on September 27, 1980), consolidating these two cases and the Opinion dated September 30, 1980 (which we received on October 3, 1980).

This appeal is taken pursuant to 26 U.S.C. § 9011 (b) (2), 28 U.S.C. § 1252, and 28 U.S.C. § 1253.

/s/ Michael L. Burack
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One of Counsel for Common Cause, David Cohen and Winifred Long

October 3, 1980

[Certificate of Service omitted in printing]

APPENDIX H

THE PRESIDENTIAL ELECTION CAMPAIGN FUND ACT, 26 U.S.C. CH. 95

26 U.S.C. § 9001. Short title

This chapter may be cited as the "Presidential Election Campaign Fund Act."

26 U.S.C. § 9002. Definitions

For purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means with respect to any presidential election, an individual who—

(A) has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party, or

(B) has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more States.

For purposes of paragraphs (6) and (7) of this section and purposes of section 9004(a)(2), the term "candidate" means, with respect to any preceding presidential election, an individual who received popular votes for the office of President in such election. The term "candidate" shall not include any individual who has ceased actively to seek election to the office of President of the United States or to the office of Vice President of the United States, in more than one State.

(3) The term "Commission" means the Federal Election Commission established by section 309(a)(1) of the Federal Election Campaign Act of 1971 [section 437c(a)(1) of title 2].

(4) The term "eligible candidates" means the candidates of a political party for President and Vice President of the United States who have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003.

(5) The term "fund" means the Presidential Election Campaign Fund established by section 9006(a).

(6) The term "major party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(7) The term "minor party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

(8) The term "new party" means with respect to any presidential election, a political party which is neither a major party nor a minor party.

(9) The term "political committee" means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

(10) The term "presidential election" means the election of presidential and vice-presidential electors.

(11) The term "qualified campaign expense" means an expense—

(A) incurred—

(i) by the candidate of a political party for the office of President to further his election to such office or to further the election of the candidate of such political party for the office of Vice President, or both,

(ii) by the candidate of a political party for the office of Vice President to further his election to such office or to further the election of the candidate of such political party for the office of President, or both, or

(iii) by an authorized committee of the candidates of a political party for the offices of President and Vice President to further the election of either or both of such candidates to such offices,

(B) incurred within the expenditure report period (as defined in paragraph (12)), or incurred before the beginning of such period to

the extent such expense is for property, services, or facilities used during such period, and

(C) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which such expense is incurred or paid.

An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, to incur such expense on behalf of such candidate or such committee. If an authorized committee of the candidates of a political party for President and Vice President of the United States also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in such proportion as the Commission prescribes by rules or regulations.

(12) The term "expenditure report period" with respect to any presidential election means—

(A) in the case of a major party, the period beginning with the first day of September before the election, or, if earlier, with the date on which such major party at its national convention nominated its candidate for election to the office of President of the United States, and ending 30 days after the date of the presidential election; and

(B) in the case of a party which is not a major party, the same period as the expenditure report period of the major party which has the

shortest expenditure report period for such presidential election under subparagraph (A).

26 U.S.C. § 9003. Condition for eligibility for payments

(a) *In general.* In order to be eligible to receive any payments under section 9006, the candidates of a political party in a presidential election shall, in writing—

(1) agree to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates,

(2) agree to keep and furnish to the Commission such records, books, and other information as it may request, and

(3) agree to an audit and examination by the Commission under section 9007 and to pay any amounts required to be paid under such section.

(b) *Major parties.* In order to be eligible to receive any payments under section 9006, the candidates of a major party in a presidential election shall certify to the Commission, under penalty of perjury, that—

(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under section 9004, and

(2) no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(d), and no contributions to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11) have been or will be accepted by such candidate or any of their authorized committees.

Such certification shall be made within such time prior to the day of the presidential election as the Commission shall prescribe by rules or regulations.

(c) *Minor and new parties.* In order to be eligible to receive any payments under section 9006, the candidates of a minor or new party in a presidential election shall certify to the Commission under penalty of perjury, that—

(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004, and

(2) such candidates and their authorized committees will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidates and their authorized committees certified to under paragraph (1) exceed the aggregate payments received by such candidates out of the fund pursuant to section 9006.

Such certification shall be made within such time prior to the day of the presidential election as the Commission shall prescribe by rules or regulations.

(d) *Withdrawal by candidate.* In any case in which an individual ceases to be a candidate as a result of the operation of the last sentence of section 9002(2), such individual—

(1) shall no longer be eligible to receive any payments under section 9006, except that such individual shall be eligible to receive payments under such section to defray qualified campaign expenses incurred while actively seeking election to the office of President of the United States or to the office of

Vice President of the United States in more than one State; and

(2) shall pay to the Secretary, as soon as practicable after the date upon which such individual ceases to be a candidate, an amount equal to the amount of payments received by such individual under section 9006 which are not used to defray qualified campaign expenses.

26 U.S.C. § 9004. Entitlement of eligible candidates to payments

(a) *In general.* Subject to the provisions of this chapter—

(1) The eligible candidates of each major party in presidential election shall be entitled to equal payments under section 9006 in an amount which, in the aggregate, shall not exceed the expenditure limitations applicable to such candidates under section 441a(b)(1)(B) of title 2.

(2) (A) The eligible candidates of a minor party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the major parties in the preceding presidential election.

(B) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding presidential election and received

5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of section 9003(a) and (c), shall be treated as eligible candidates entitled to payments under section 9006 in an amount computed as provided in subparagraph (A) by taking into account all the popular votes received by such candidate for the office of President in the preceding presidential election. If eligible candidates of a minor party are entitled to payments under this subparagraph, such entitlement shall be reduced by the amount of the entitlement allowed under subparagraph (A).

(3) The eligible candidates of a minor party or a new party in a presidential election whose candidate for President in such election receives, as such candidate, 5 percent or more of the total number of popular votes cast for the office of President in such election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for President of the major parties. In the case of eligible candidates entitled to payments under paragraph (2), the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under the preceding sentence exceeds the amount of the entitlement under paragraph (2).

(b) *Limitations.* The aggregate payments to which the eligible candidates of a political party shall be entitled under subsections (a)(2) and (3) with respect

to a presidential election shall not exceed an amount equal to the lower of—

(1) the amount of qualified campaign expenses incurred by such eligible candidates and their authorized committees, reduced by the amount of contributions to defray qualified campaign expenses received and expended or retained by such eligible candidates and such committees, or

(2) the aggregate payments to which the eligible candidates of a major party are entitled under subsection (a)(1), reduced by the amount of contributions described in paragraph (1) of this subsection.

(c) *Restrictions.* The eligible candidates of a political party shall be entitled to payments under subsection (a) only—

(1) to defray qualified campaign expenses incurred by such eligible candidates or their authorized committees, or

(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidates or such committees) used to defray such qualified campaign expenses.

(d) *Expenditures from personal funds.* In order to be eligible to receive any payment under section 9006, the candidate of a major, minor, or new party in an election for the office of President shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for election to the office of President in excess of, in the aggregate, $50,000. For purposes of this subsection, expenditures from personal funds made by a candidate of a major, minor, or new

party for the office of Vice President shall be considered to be expenditures by the candidate of such party for the office of President.

(e) *Definition of immediate family.* For purposes of subsection (d), the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

26 U.S.C. § 9005. Certification by Commission

(a) *Initial certifications.* Not later than 10 days after the candidates of a political party for President and Vice President of the United States have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003, the Commission shall certify to the Secretary of the Treasury for payment to such eligible candidates under section 9006 payment in full of amounts to which such candidates are entitled under section 9004.

(b) *Finality of certifications and determinations.* Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9007 and judicial review under section 9011.

26 U.S.C. § 9006. Payments to eligible candidates

(a) *Establishment of campaign fund.* There is hereby established on the books of the Treasury of the United States a special fund to be known as the "Presidential Election Campaign Fund." The Secretary of the Treasury shall, from time to time, transfer to the fund an amount not in excess of the sum of the amounts designated (subsequent to the previous Presidential election) to the fund by individuals under section 6096. There is appropriated to the fund for each fiscal year, out of amounts in the general fund of the Treasury not other-

wise appropriated, an amount equal to the amounts so designated during each fiscal year, which shall remain available to the fund without fiscal year limitation.

(b) *Payments from the fund.* Upon receipt of a certification from the Commission under section 9005 for payment to the eligible candidates of a political party, the Secretary of the Treasury shall pay to such candidates out of the fund the amount certified by the Commission. Amounts paid to any such candidates shall be under the control of such candidates.

(c) *Insufficient amounts in fund.* If at the time of a certification by the Commission under section 9005 for payment to the eligible candidates of a political party, the Secretary determines that the moneys in the fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he shall withhold from such payment such amount as he determines to be necessary to assure that the eligible candidates of each political party will receive their pro rata share of their full entitlement. Amounts withheld by reason of the preceding sentence shall be paid when the Secretary determines that there are sufficient moneys in the fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there are not sufficient moneys in the fund to satisfy the full entitlement of the eligible candidates of all political parties, the amounts so withheld shall be paid in such manner that the eligible candidates of each political party receive their pro rata share of their full entitlement. In any case in which the Secretary determines that there are insufficient moneys in the fund to make payments under subsection (b), section 9008 (b) (3), and section 9037(b), moneys shall not be made available from any other source for the purpose of making such payments.

26 U.S.C. § 9007. Examinations and audits; repayments

(a) *Examinations and audits.* After each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.

(b) *Repayments.*

(1) If the Commission determines that any portion of the payments made to the eligible candidates of a political party under section 9006 was in excess of the aggregate payments to which candidates were entitled under section 9004, it shall so notify such candidates, and such candidates shall pay to the Secretary of the Treasury an amount equal to such portion.

(2) If the Commission determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled under section 9004, it shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

(3) If the Commission determines that the eligible candidates of a major party or any authorized committee of such candidates accepted contributions (other than contributions to make up deficiencies in payments out of the fund on account of the application of section 9006(c)) to defray qualified campaign expenses (other than qualified campaign expenses with respect to which payment is required under paragraph (2)), it shall notify such candidates of the amount of the contributions so accepted, and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

(4) If the Commission determines that any amount of any payment made to the eligible candidates of a political party under section 9006 was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used to defray such qualified campaign expenses,

it shall notify such candidates of the amount so used, and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

(5) No payment shall be required from the eligible candidates of a political party under this subsection to the extent that such payment, when added to other payments required from such candidates under this subsection, exceeds the amount of payments received by such candidates under section 9006.

(c) *Notification.* No notification shall be made by the Commission under subsection (b) with respect to a presidential election more than 3 years after the day of such election.

(d) *Deposit of repayments.* All payments received by the Secretary of the Treasury under subsection (b) shall be deposited by him in the general fund of the Treasury.

26 U.S.C. § 9008. Papments for presidential nominating conventions.

(a) *Establishment of accounts.* The Secretary shall maintain in the fund, in addition to any account which he maintains under section 9006(a), a separate account for the national committee of each major party and minor

party. The Secretary shall deposit in each such account an amount equal to the amount which each such committee may receive under subsection (b). Such deposits shall be drawn from amounts designated by individuals under section 6096 and shall be made before any transfer is made to any account for any eligible candidate under section 9006(a).

(b) *Entitlement to payments from the fund.*

(1) *Major parties.* Subject to the provisions of this section, the national committee of a major party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $3,000,000.

(2) *Minor parties.* Subject to the provisions of this section, the national committee of a minor party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount the national committee of a major party is entitled to receive under paragraph (1) as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding presidential election.

(3) *Payments.* Upon receipt of certification from the Commission under subsection (g), the Secretary shall make payments from the appropriate account maintained under subsection (a) to the national committee of a major party or minor party which elects to receive its entitlement under this subsection. Such payments shall be available for use by such committee in accordance with the provisions of subsection (c).

(4) *Limitation.* Payments to the national committee of a major party or minor party under this subsection, from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

(5) *Adjustment of entitlements.* The entitlements established by this subsection shall be adjusted in the same manner as expenditure limitations established by section 441a(b) and section 441a(d) of title 2, United States Code, are adjusted pursuant to the provisions of section 441a(c) of such title.

(c) *Use of funds.* No part of any payment made under subsection (b) shall be used to defray the expenses of any candidate or delegate who is participating in any presidential nominating convention. Such payments shall be used only—

(1) to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) by or on behalf of the national committee receiving such payments; or

(2) to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds (other than contributions to defray such expenses received by such committee) used to defray such expenses.

(d) *Limitation of expenditures.*

(1) *Major parties.* Except as provided by paragraph (3), the national committee of a major party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled under subsection (b)(1).

(2) *Minor parties.* Except as provided by paragraph (3), the national committee of a minor party may not make expenditures with respect to a presidential nominating convention which, in the aggre-

gate, exceed the amount of the entitlement of the national committee of a major party under subsection (b)(1).

(3) *Exception.* The Commission may authorize the national committee of a major party or minor party to make expenditures which, in the aggregate, exceed the limitation established by paragraph (1) or paragraph (2) of this subsection. Such authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee.

(4) *Provision of legal or accounting services.* For purposes of this section, the payment, by any person other than the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services) of compensation to any individual for legal or accounting services rendered to or on behalf of the national committee of a political party shall not be treated as an expenditure made by or on behalf of such committee with respect to its limitations on presidential nominating convention expenses.

(e) *Availability of payments.* The national committee of a major party or minor party may receive payments under subsection (b)(3) beginning on July 1 of the calendar year immediately preceding the calendar year in which a presidential nominating convention of the political party involved is held.

(f) *Transfer to the fund.* If, after the close of a presidential nominating convention and after the national committee of the political party involved has been paid the amount which it is entitled to receive under this section, there are moneys remaining in the account of such

national committee, the Secretary shall transfer the moneys so remaining to the fund.

(g) *Certification by Commission.* Any major party or minor party may file a statement with the Commission in such form and manner and at such times as it may require, designating the national committee of such party. Such statement shall include the information required by section 433(b) of title 2, together with such additional information as the Commission may require. Upon receipt of a statement filed under the preceding sentences, the Commission promptly shall verify such statement according to such procedures and criteria as it may establish and shall certify to the Secretary for payment in full to any such committee of amounts to which such committee may be entitled under subsection (b). Such certifications shall be subject to an examination and audit which the Commission shall conduct no later than December 31 of the calendar year in which the presidential nominating convention involved is held.

(h) *Repayments.* The Commission shall have the same authority to require repayments from the national committee of a major party or a minor party as it has with respect to repayments from any eligible candidate under section 9007(b). The provisions of section 9007(c) and section 9007(d) shall apply with respect to any repayment required by the Commission under this subsection.

26 U.S.C. § 9009. Reports to Congress; regulations

(a) *Reports.* The Commission shall, as soon as practicable after each presidential election, submit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees;

(2) the amounts certified by it under section 9005 for payment to the eligible candidates of each political party;

(3) the amount of payments, if any, required from such candidates under section 9007, and the reasons for each payment required;

(4) the expenses incurred by the national committee of a major party or minor party with respect to a presidential nominating convention;

(5) the amounts certified by it under section 9008(g) for payment to each such committee; and

(6) the amount of payments, if any, required from such committees under section 9008(h), and the reasons for each such payment.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) *Regulations, etc.* The Commission is authorized to prescribe such rules and regulations in accordance with the provisions of subsection (c), to conduct such examinations and audits (in addition to the examinations and audits required by section 9007(a)), to conduct such investigations, and to require the keeping and submission of such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this chapter.

(c) *Review of regulations.*

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or

regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. Whenever a committee of the House of Representatives reports any resolution relating to any such rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(4) For purposes of this subsection, the term "rule or regulation" means a provision or series of interrelated provisions stating a single separable rule of law.

26 U.S.C. § 9010. Participation by Commission in judicial proceedings

(a) *Appearance by counsel.* The Commission is authorized to appear in and defend against any action filed under section 9011, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose com-

pensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) *Recovery of certain payments.* The Commission is authorized through attorneys and counsel described in subsection (a) to appear in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary of the Treasury as a result of examination and audit made pursuant to section 9007.

(c) *Declaratory and injunctive relief.* The Commission is authorized through attorneys and counsel described in subsection (a) to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter covered by the provisions of this subtitle or section 6096. Upon application of the Commission an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(d) *Appeal.* The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

26 U.S.C. § 9011. Judicial review

(a) *Review of certification, determination, or other action by the Commission.* Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia upon petition filed in such Court

by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the certification, determination, or other action by the Commission for which review is sought.

(b) *Suits to implement chapter.*

(1) The Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provisions of this chapter.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

26 U.S.C. § 9012. Criminal penalties

(a) *Excess expenses.*

(1) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of the aggregate pay-

ments to which the eligible candidates of a major party are entitled under section 9004 with respect to such election. It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under section 9008(d), unless the incurring of such expenses is authorized by the Commission under section 9008(d)(3).

(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(b) *Contributions.*

(1) It shall be unlawful for an eligible candidate of a major party in a presidential election or any of his authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(c), or to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11).

(2) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a presidential election or any of his authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified

campaign expenses incurred with respect to such election by such eligible candidate and his authorized committees.

(3) Any person who violates paragraph (1) or (2) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(c) *Unlawful use of payments.*

(1) It shall be unlawful for any person who receives any payment under section 9006, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(2) It shall be unlawful for the national committee of a major party or minor party which receives any payment under section 9008(b)(3) to use, or authorize the use of, such payment for any purpose other than a purpose authorized by section 9008(c).

(3) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(d) *False statements, etc.*

(1) It shall be unlawful for any person knowingly and willfully—

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this subtitle, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter; or

(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.

(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(e) *Kickback and illegal payments.*

(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees. It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a presidential nominating convention.

(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or

illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees, or in connection with any expense incurred by the national committee of a major party or minor party with respect to a presidential nominating convention shall pay to the Secretary of the Treasury, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

(f) *Unauthorized expenditures and contributions.*

(1) Except as provided in paragraph (2), it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding $1,000.

(2) This subsection shall not apply to—

(A) expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or in taking editorial positions, or

(B) expenditures by any organization described in section 501(c) of this title which is exempt from tax under section 501(a) of this title in communicating to its members the views of that organization.

(3) Any political committee which violates paragraph (1) shall be fined not more than $5,000, and any officer or member of such committee who knowingly and willfully consents to such violation and

any other individual who knowingly and willfully violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(g) *Unauthorized disclosure of information.*

(1) It shall be unlawful for any individual to disclose any information obtained under the provisions of this chapter except as may be required by law.

(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

26 U.S.C. § 9013. Effective date of chapter

The provisions of this chapter shall take effect on January 1, 1973.

* * * *

RELATED PROVISIONS OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED, 2 U.S.C. CH. 14

2 U.S.C. § 441a(b): *Dollar limits on expenditures by candidates for office of President of the United States.*

(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—

(A) $10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the

greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section), or $200,000; or

(B) $20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection—

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by—

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

2 U.S.C. § 441a(c): *Increases on limits based on increases in price index.*

(1) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation established by sub-

section (b) of this section and subsection (d) of this section shall be increased by such percent difference. Each amount so increased shall be the amount in effect for such calendar year.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means the calendar year of 1974.

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action
No. 80-1609

COMMON CAUSE, a non-profit membership corporation
suing on behalf its members,
2030 M Street, N.W.
Washington, D.C. 20036
(202) 833-1200

DAVID COHEN,
1322 Holly Street, N.W.
Washington, D.C. 20012
(202) 723-0707

WINIFRED LONG,
5043 Dana Place, N.W.
Washington, D.C. 20016
(202) 362-8319

Plaintiffs,

v.

HARRISON SCHMITT, in his capacity as Chairman
of Americans For Change,
338 8th Street, S.E.
Washington, D.C. 20003

CARL T. CURTIS, in his capacity as Treasurer
of Americans For Change,
6613 31st Place, N.W.
Washington, D.C. 20015

AMERICANS FOR CHANGE,
an unincorporated association,
218 N. Lee Street
Room 321
Alexandria, Virginia 22214

AMRICANS FOR AN EFFECTIVE PRESIDENCY,
an unincorporated association,
1225 19th Street, N.W.
Suite 415
Washington, D.C. 20036

FUND FOR A CONSERVATIVE MAJORITY,
an unincorporated association,
1022 Wilson Boulevard
Arlington, Virginia 22209
Defendants,

and

FEDERAL ELECTION COMMISSION,
an agency of the United States,
1325 K Street, N.W.
Washington, D.C. 20463
Intervenor-Defendant.

AMENDED COMPLAINT FOR ENTRY OF DECLARATORY AND INJUNCTIVE RELIEF BY A THREE-JUDGE DISTRICT COURT

Nature of the Case

1. This case arises under the Presidential Election Campaign Fund Act, Chapter 95 of Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. §§ 9001 *et seq.* ("Fund Act"). Under the Fund Act, a major party presidential candidate may receive federal funding to finance his campaign. In order to be eligible for federal funding, the candidate must certify that (1) he will not accept

private contributions to defray campaign expenses and (2) he and his campaign organizations will not incur expenses in excess of the amount of federal funds to which he is entitled. 26 U.S.C. §§ 9002(4), 9003(b). Once the candidate has become eligible for federal funding by so certifying, he must abide by these two conditions. *Id.* §§ 9012(a)(1), 9012(b)(1). Congress intended, by these provisions, to ensure that the campaign of a candidate who has elected to receive federal funding will in fact be financed out of federal funds, and not out of private funds raised on the side.

2. Congress foresaw, however, that this objective might be defeated by political committees that, although not expressly authorized by or formally coordinated with the candidate, solicit contributions and make expenditures on a large scale in support of a presidential candidate who has elected to receive federal financing and appear for all practical purposes to be an arm of the candidate's campaign. *See id.* § 9002(1). Accordingly, the Fund Act prohibits committees (but not individuals or informal groups of persons acting together directly on their own behalf) from incurring expenditures of more than $1,000 to further the election of a presidential candidate who has elected to receive federal funding. 26 U.S.C. § 9012(f)(1).

3. Ronald Reagan, the Republican Party's Presidential candidate, is virtually certain to elect to receive federal funding (in the amount of approximately $29,400,000) to finance his campaign. Defendants, purporting to act independently of the Reagan campaign, are seeking to raise, in the aggregate, between $26,000,000 and $48,000,000 in private contributions, which they plan to spend on professionally run campaigns to further Mr. Reagan's candidacy even if Mr. Reagan elects to receive federal funding. Defendants' actions will violate 26 U.S.C. § 9012(f)(1), and will also result

in the violation of 26 U.S.C. §§ 9012(a)(1) and 9012 (b)(1). Those actions will subvert the scheme enacted by Congress for the federal funding of presidential elections and have caused and will cause injury to plaintiffs. Plaintiffs ask this Court to declare defendants' actions to be unlawful and to enjoin them.

Jurisdiction and Venue

4. The Court has jurisdiction under 26 U.S.C. § 9011 (b) to entertain actions for declaratory and injunctive relief to implement or construe provisions of the Fund Act. That section provides that such actions may be brought by persons eligible to vote for President, without regard to whether other remedies have been exhausted. The Court also has jurisdiction under 28 U.S.C. § 1331, because the action arises under the laws of the United States and the amount in controversy exceeds $10,000 exclusive of interest and costs.

5. Venue in this Court is proper under 28 U.S.C. §§ 1391(b) and (c).

Three-Judge District Court

6. Convocation of a three-judge district court is required by 26 U.S.C. § 9011(b)(2), which provides that actions to implement or construe the Fund Act shall be heard and determined on an expedited basis by a three-judge district court in accordance with the procedures set forth in 28 U.S.C. § 2284.

The Parties

7. Plaintiff Common Cause is a non-profit membership corporation organized under the laws of the District of Columbia. Common Cause has approximately 225,000 dues-paying members in the fifty states and the District of Columbia. Common Cause is organized to promote,

on a nonpartisan basis, its members' interests in social welfare, civic betterment and social improvement in the United States by presenting its positions and those of its members to Congress, various agencies of the Executive Branch, and independent agencies of the Federal Government. Common Cause seeks to achieve these objectives by making government more responsive to the needs and demands of citizens through reform of the electoral process. The members of Common Cause include citizens of the United States who have been, are and intend to be registered voters for candidates for the office of President of the United States, contributors of lawful amounts of money to campaigns for the office of the President, and active participants in campaigns for the election of candidates for President. Common Cause and its members have a direct interest (1) in the integrity of an electoral process free from corruption or the appearance of corruption, (2) in ensuring that candidates for high public office are in fact accountable to their constituents, including plaintiffs, and (3) in ensuring compliance with laws enacted by Congress to preserve and protect these interests, including laws such as the Fund Act that restrict the flow of private money into presidential election campaigns.

8. Plaintiff David Cohen is a resident of and a registered voter in the District of Columbia. He is eligible to vote for President of the United States in 1980. He is the President and a member of Common Cause, and as such he shares the interests of Common Cause and its members set forth above. He is also a registered lobbyist on behalf of Common Cause, and as such he has been and intends to be actively involved in presenting his views and the views of Common Cause and its members to Congress, to various agencies of the Executive Branch and to independent agencies of the Federal Government.

9. Plaintiff Winifred Long is a resident of and a registered voter in the District of Columbia. She is eligible

to vote for President of the United States in 1980. She will vote for a presidential candidate other than Ronald Reagan in the 1980 presidential election. She has made lawful contributions of money to a presidential candidate other than Ronald Reagan.

10. Defendant Harrison Schmitt resides in the District of Columbia. He participated in the formation and organization of, and is the Chairman of, defendant Americans For Change. In that capacity, he is responsible for the operations, management and activities of defendant Americans For Change.

11. Defendant Carl T. Curtis resides in the District of Columbia. He participated in the formation and organization of, and is the Treasurer of, defendant Americans For Change. In that capacity, he is responsible for the operations, management and activities of defendant Americans For Change.

12. Defendant Americans For Change ("AFC") is an unincorporated association. It maintains some or all of its records and its bank account in the District of Columbia. It also holds meetings and press conferences and conducts some or all of its business in the District of Columbia. Defendant AFC registered as a "political committee" with the Federal Election Commission on or about May 23, 1980, and it is a "political committee" within the meaning of the Fund Act.

13. Defendant AFC is closely linked, through its organizers, officers and agents, to the Republican Party, the Republican National Committee and the Reagan Campaign Organization. For example:

a. Defendant Schmitt, the Chairman of AFC, is currently a member of the Republican National Committee Advisory Council on Economic Affairs and its subcommittee on inflation. He is also a delegate to the 1980 Republican National Convention and is pledged to vote for Ronald Reagan.

b. Stan Huckaby, the Assistant Treasurer and Custodian of Records of AFC, is currently the Treasurer of the 1980 Republican Unity Committee, which is an affiliated committee of the Reagan For President Committee. He is also a paid consultant of the Republican National Committee and maintains his office at the Republican National Committee headquarters in the District of Columbia.

c. James Edwards, a member of the AFC steering committee, is currently a member of the Republican National Committee Advisory Council on Natural Resources. He is also a delegate to the 1980 Republican National Convention and is pledged to vote for Ronald Reagan.

d. George Murphy, a member of the AFC steering committee, is currently a member of the Policy Board of the Republican National Committe Advisory Council on National Security and International Affairs.

e. Anna Chennault, a member of the AFC steering committee, is the Co-Chair of the Nationalities Division of the official Reagan For President campaign committee. She is currently a member of the Republican National Committee Advisory Committee on Fiscal Affairs and an ex-officio member of the Republican National Committee Executive Committee.

14. Defendant Americans For an Effective Presidency ("AFEP") is an unincorporated association. Its offices are in the District of Columbia. It holds press conferences and meetings and conducts business in the District of Columbia. Its media operations and staff activities are centered in the District of Columbia. Defendant AFEP registered as a "political committee" with the Federal Election Commission on or about July 9, 1980, and it is a "political committee" within the meaning of the Fund Act.

15. Defendant AFEP is closely linked, through its organizers, officers and agents, to the Republican Party, the Republican National Committee and past and present campaign organizations for Republican Party candidates. For example:

a. Peter Flanigan, the Chairman of AFEP, is a member of the Policy Board of the Republican National Committee's Advisory Council on Economic Affairs. He was the Deputy Campaign Chairman of the official 1968 general election campaign for the Republican Party candidate, Richard Nixon.

b. Stuart Spencer, who was involved in the organization of AFEP, is a full-time consultant to the official Reagan campaign. He was the national political director for the official 1976 general election campaign for the Republican Party candidate, Gerald Ford.

c. William Clements, who was involved in the organization of AFEP, is the Chairman of the official Reagan campaign in Texas. He is a member of the Republican National Committee's Advisory Council on National Security and International Affairs.

d. Thomas Reed, the Chairman of the Expenditures Committee of AFEP, was the Chairman of Ronald Reagan's 1970 gubernatorial re-election campaign and is a past member of the Republican National Committee.

e. Don Fierce, the Staff Director of AFEP, was a regional political director for the official 1976 general election campaign for the Republican Party candidate, Gerald Ford. He has also managed numerous other official Republican campaigns.

f. Bailey, Deardourff & Associates, the Media Directors of AFEP, served as the advertising agency

for the official 1976 general election campaign for the Republican Party candidate, Gerald Ford.

16. Defendant Fund For a Conservative Majority ("FCM") is an unincorporated association. It registered with the Commission as a "political committee" at its present address on or about May 10, 1979. It is a "political committee" within the meaning of the Fund Act. Defendant FCM conducts business within the District of Columbia. Its fundraising activities in support of the candidacy of Ronald Reagan are conducted in whole or in part from offices at 927 15th Street, N.W., in the District of Columbia. In addition, defendant FCM contracts for the purchase of media and printing services within the District of Columbia and makes related expenditures in the District of Columbia.

Count I

17. Defendant AFC is in the process of attempting to raise between $20,000,000 and $30,000,000 from members of the general public through a large-scale nationwide fundraising campaign. It intends to use the money it raises to purchase large amounts of radio and television time, as well as blocks of newspaper and magazine space, in which to run professionally prepared advertisements in support of the candidacy of Ronald Reagan. In addition to these advertisements, defendant AFC intends to prepare and distribute Ronald Reagan buttons, window signs, bumper stickers, brochures and other campaign literature.

18. Defendant AFC operates, or will operate, in the same manner as an official political campaign organization. AFC's activities in support of Ronald Reagan's candidacy are being undertaken under the name "Reagan For President in '80." Upon information and belief, the employees, consultants and agents of AFC include (or

will include), among others, professional speechwriters, pollsters, public relations experts, advertising specialists, and television and other media experts. AFC's direct mailing campaigns are or will be in whole or in part computerized.

19. Exhibits 1 and 2 to this Amended Complaint are true and correct copies of literature distributed at a July 16, 1980 press conference held by AFC. The press conference was held in the main press briefing room in Cobo Hall, Detroit, in conjunction with and as a part of the 1980 Republican National Convention. The press conference was announced on the official Republican National Convention calendar of events for July 16, 1980. Exhibit 3 to this Amended Complaint is a true and correct copy of that calendar of events.

20. Defendant AFEP is in the process of attempting to raise between $3,000,000 and $8,000,000 from members of the general public through a large-scale nationwide fundraising campaign involving both personal and direct-mail solicitation. AFEP intends to use 75% or more of the money it raises to purchase television, radio and newspaper advertising in support of the candidacy of Ronald Reagan.

21. Defendant AFEP operates, or will operate, in the same manner as an official political campaign organization. The staff director, media directors and other consultants, employees and agents of AFEP are professional political campaigners. AFEP utilizes, or will utilize, the services of professional speechwriters, pollsters, public relations experts, advertising specialists and television and other media experts. AFEP's direct mailing campaigns are or will be in whole or in part computerized.

22. Exhibit 4 to this Amended Complaint is a true and correct copy of a statement issued by defendant AFEP on or about July 9, 1980. The statement describes the activities and operations of AFEP.

23. Defendant FCM is in the process of attempting to raise between $3,000,000 and $10,000,000 from members of the general public through a large-scale nationwide direct-mail fundraising campaign. It intends to use the money it raises to purchase large amounts of radio and television time, as well as blocks of newspaper and magazine space, in which to run professionally prepared advertisements in support of the candidacy of Ronald Reagan. In addition to these advertisements, defendant FCM intends to prepare and distribute Ronald Reagan buttons, posters, lapel pins, brochures and other campaign literature.

24. Defendant FCM resembles and operates like an official political campaign organization. Its activities in support of the candidacy of Ronald Reagan are being undertaken under the name "Citizens for Reagan in '80." That name and Mr. Reagan's picture are prominently displayed on the literature prepared by FCM. FCM's direct-mail campaigns are in whole or in part computerized. Upon information and belief, the employees, consultants and agents of FCM include professional speechwriters, public relations and advertising specialists, media experts and firms that maintain and rent professionally compiled lists of potential contributors.

25. Exhibit 5 to this Amended Complaint is a true and correct copy of schedules filed by defendant FCM with the Federal Election Commission. The schedules show expenditures made by FCM in support of the candidacy of Ronald Reagan during the months of April and May 1980.

26. Exhibit 6 to this Amended Complaint is a true and correct copy of literature prepared and distributed by defendant FCM for the purpose of soliciting contributions in support of the candidacy of Ronald Reagan.

27. Ronald Reagan is the Republican Party's candidate for President. He will elect, or is likely to elect, to re-

ceive federal funding for his campaign. The expenditures made by the unofficial campaign organizations of defendants AFC, AFEP and FCM in furtherance of Mr. Reagan's candidacy would be above and beyond the expenditures that the official Reagan campaign organization will incur.

28. The Fund Act provides, in 26 U.S.C. § 9012(f)(1), that, with exceptions not material here:

> ". . . it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding $1000."

29. If Mr. Reagan elects to receive federal funding for his campaign (as he is likely to do), he will be an "eligible candidate" within the meaning of Section 9012(f)(1). *See* 26 U.S.C. § 9002(4). Defendants AFC, AFEP and FCM will each be a "political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election" within the meaning of Section 9012(f)(1). *See* 26 U.S.C. §§ 9002(1), (9).

30. The expenditures that defendants AFC, AFEP and FCM are incurring or will incur to further the election of Mr. Reagan would constitute "qualified campaign expenses" within the meaning of Section 9012(f) if they were incurred by an authorized committee of Mr. Reagan. *See* 26 U.S.C. § 9002(11).

31. Defendants AFC, AFEP and FCM have each incurred or will each incur, knowingly and willingly, such

expenditures in an aggregate amount exceeding $1,000. By these actions, defendants AFC, AFEP and FCM will each violate 26 U.S.C. § 9012(f)(1).

Count II

32. Plaintiffs repeat the allegations contained in the foregoing paragraphs.

33. The unofficial campaigns of defendants AFC, AFEP and FCM to further the election of Ronald Reagan will be conducted in tandem with and parallel to the official Reagan campaign. The campaigns conducted by AFC, AFEP, FCM and the official Reagan campaign organization will, upon information and belief, be coordinated with each other through information conveyed by, *inter alia*, public statements, press releases, press reports and campaign finance reports issued by AFC, AFEP, FCM and the Reagan campaign organization. Through such devices, defendants AFC, AFEP and FCM will learn of the expenditures, strategies and tactics of the official Reagan campaign and will adjust their expenditures, strategies and tactics in order to coordinate with and supplement those of the official Reagan campaign. In addition, persons in the official Reagan campaign will be able to learn through the same or similar devices of the expenditures, strategies and tactics of defendants AFC, AFEP and FCM, and will be able to adjust the activities of the official campaign in the same manner.

34. As a result, the expenditures of defendants AFC, AFEP and FCM in furtherance of Ronald Reagan's campaign are and will be contributions to the Reagan campaign within the meaning of the Fund Act and will result in violations of the Fund Act. *See* 26 U.S.C. §§ 9003(b)(2), 9012(b)(1). In addition, the expenditures made by defendants AFC, AFEP and FCM are and will be expenditures of the Reagan campaign within the meaning

of the Fund Act, *see* 26 U.S.C § 9002(11), and will result in further violations of the Fund Act. *See* 26 U.S.C. § 9003(b)(1), 9012(a)(1).

Irreparable Injury to Plaintiffs

35. The foregoing violations of law will cause irreparable injury to plaintiffs, in several ways:

(a) The unlawful actions of defendants will injure plaintiffs' right, as voters in the presidential election, to have the election process and the federal campaign funding scheme function in accordance with law and be free from the unlawful and undue influence to which large aggregations of private money may give rise.

(b) By inducing more persons to vote for Mr. Reagan than would do so if the federal election laws were complied with, the unlawful actions of defendants will dilute the votes of plaintiff Long and of those members of Common Cause who intend to vote for a candidate other than Ronald Reagan.

(c) Defendants' unlawful multi-million dollar expenditures are likely, if Ronald Reagan is elected, greatly to enhance defendants' access to, and their influence over the actions of, the federal Government and correspondingly to decrease plaintiffs' ability to influence the actions of the Government. As a result, plaintiffs' ability effectively to exercise their right to petition the Government on issues where their views differ from those of defendants will be impaired. In particular, plaintiff Cohen's ability effectively to lobby on behalf of Common Cause and its members will be impaired.

Need For Expedition

36. In order to receive federal campaign funding, Ronald Reagan must meet the conditions for eligibility set forth in 26 U.S.C. § 9003(a), (b). He is required to meet those conditions within 14 days after he is nominated as the Republican Party candidate for President. 11 C.F.R. § 141.2(d). Upon satisfying those conditions, Mr. Reagan will become an "eligible candidate" within the meaning of the Fund Act. *See* 26 U.S.C. § 9002(4).

37. The Republican Party convention, now under way, will end on July 17, 1980. Accordingly, Mr. Reagan will become an "eligible candidate" within the meaning of the Fund Act no later than July 31, 1980. The general election campaign will be underway in earnest by mid-August 1980.

38. Immediate action is needed to ensure that the Congressional scheme for federal funding of campaigns is not irreparably undermined before the Court can act. If proceedings in this case were to await Mr. Reagan's formal status as an "eligible candidate," the entry of relief by this Court would come too late to avoid causing substantial injury to plaintiffs and substantial damage to the functioning of the campaign financing scheme enacted by Congress.

PRAYER FOR RELIEF

For these reasons, plaintiffs pray:

(1) That a Court of three judges be promptly convened, as required by 26 U.S.C. § 9011(b)(2);

(2) That the Court declare defendants' actions to be unlawful under the Fund Act and enjoin defendants from continuing to take actions that violate the Fund Act;

(3) That plaintiffs be awarded costs; and

(4) That the Court enter such other and further relief as may be appropriate.

Respectfully submitted,

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LOUIS R. COHEN

/s/ Michael L. Burack
MICHAEL L. BURACK

/s/ Roger M. Witten
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July 17, 1980

[Certificate of Service omitted in printing]

[The Exhibits to the Amended Complaint have been lodged with the Court under separate cover.]